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## Foreword

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## Foreword

On Law Day, May 1, 1970, in historic Colton Hall at Monterey, California, Donald R. Wright took his seat upon the bench of the Supreme Court of California as head of the court. It was at once a challenging and auspicious occasion. An able and respected practitioner at the bar, a seasoned trial and appellate judge at all levels of the judicial system, the new Chief Justice assumed the helm after three decades of distinguished leadership by Chief Justices Gibson and Traynor. This public debut, in which he impressed all present by his conduct of the session, was followed on the succeeding Wednesday by the court's weekly conference at which he presided with a *savoir faire* literally amazing to his colleagues. Thus, the Wright court came into being. Over a period of almost seven years, its Chief continued to surpass all predictions about him. His opinions added luster to the court. His administration of the judicial branch was masterful. In a word, his performance was superb.

The court which he joined, however, was far from being a mere impersonal or abstract entity. On the contrary, possessing realistic and tangible dimensions by virtue of its tradition, decisions, and the personalities of its then current membership, it could well fit the description given the nation's highest Court by Justice Frankfurter: "To be sure, the Court is an institution, but individuals, with all their diversities of endowment, experience and outlook, determine its actions."<sup>1</sup> Although the new member might not have agreed with Holmes that "[w]e are very quiet there but it is the quiet of a storm center,"<sup>2</sup> he might nevertheless have sensed at the start that high court justices "move freely in wider orbits"<sup>3</sup> and "are fired with an exuberant enthusiasm [so that] [j]udicial law-making is bursting out all over."<sup>4</sup> It was soon clear, however, that while the new Chief Justice brought to the court a strong institutional sense, he was also aware that judicial decisionmaking by a state's highest court must be responsive to social change and must reckon with the problems of a complex and pluralistic society. Or, as Harold Laski put it, a great judge "must be capable of stern

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1. F. FRANKFURTER, MR. JUSTICE HOLMES AND THE SUPREME COURT 44 (1961).

2. O. HOLMES, COLLECTED LEGAL PAPERS 292 (2d ed. 1952).

3. A. COX, THE ROLE OF THE SUPREME COURT IN AMERICAN GOVERNMENT 1 (1976).

4. L. JAFFE, ENGLISH AND AMERICAN JUDGES AS LAWMAKERS 2 (1969) [hereinafter cited as JAFFE].

logic, and yet refuse to sacrifice to logic the hopes and fears and wants of men.”<sup>5</sup> So when the occasion required, Chief Justice Wright was not adverse to moving freely in wider orbits—indeed there was every indication of his enthusiasm for such galactic missions.

During the six years and nine months of his service on the California Supreme Court, Chief Justice Wright authored one hundred seventy-two majority opinions, eight concurring opinions, three concurring and dissenting opinions, and three dissenting opinions: one hundred eighty-six opinions in all. They are the carefully wrought products of a composite author—the common law lawyer unearthing and organizing the facts of the record, the trial judge probing the posture and tactics of the contest below, the appellate scholar searching for a controlling principle, and the civilized and compassionate man fitting it all into proper perspective. Each case was a matter of his personal and intense concern, from his first connection with it either as a petition for hearing or as an original proceeding. In cases in which he felt a hearing should be granted, he frequently read large portions of the record, reporting back to the court in conference, so as to satisfy himself and assure his colleagues as to the nature and magnitude of the issues involved and the necessity of having them heard by the California Supreme Court. In the preparation of an opinion, although the theories of the parties may have been adequately congealed into points in the briefs, he often immersed himself in the voluminous testimony in order to get the “feel” or “flavor” of the case. Thoroughly familiar with the record, he decided the case in a full and carefully reasoned opinion, and, to use Judge Learned Hand’s words, “never disguised the difficulties, as lazy judges do who win the game by sweeping all the chessmen off the table.”<sup>6</sup> We may say of the Chief Justice what Professor Freund has written of Justice Brandeis: “As a judge he acted on the principle that knowledge must precede understanding, as understanding should precede judging, and to this end he committed himself to almost incredible labors of investigation and exposition, so that what he touched might be illuminated.”<sup>7</sup>

His opinions have made significant contributions to California law in a wide range of subjects. Within the limitations of this tribute, some idea of his influence may be obtained from the following salient examples. In the field of torts, discarding a long-standing common law rule to the contrary, he held a vendor of alcoholic beverages liable to an injured third person for furnishing such beverages to the obviously intoxicated patron, who later

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5. Laski, *Mr. Justice Holmes*, in *MR. JUSTICE HOLMES* 139 (F. Frankfurter ed. 1931).

6. Hand, *Mr. Justice Cardozo*, 52 *HARV. L. REV.* 361, 362 (1939).

7. Freund, *Mr. Justice Brandeis*, in *MR. JUSTICE* 199 (A. Dunham & P. Kurland eds. 1959).

caused the injuries;<sup>8</sup> and he imposed strict liability in tort on a successor corporation for the defective product of its corporate predecessor;<sup>9</sup> but in an arm's length stock purchase transaction, he declined to hold the seller's attorneys liable to the buyer for negligent advice to the seller, not foreseeably to be transmitted to the buyer.<sup>10</sup> In the field of contracts, he held that a general class of unemployed persons were not third party beneficiaries of a contract between corporate manufacturers and the United States government to provide job training under a government program to alleviate unemployment.<sup>11</sup> In probate law, he defined the nature and scope of an executor's duty in the collection and preservation of the assets of the estate.<sup>12</sup> In massive litigation of the utmost concern to the people of this state, Chief Justice Wright authored opinions for an unanimous court in each of the following cases: adopting new reapportionment plans due to the Legislature's continuing failure to pass legislative and congressional reapportionment bills acceptable to the Governor;<sup>13</sup> defining and determining pueblo water rights;<sup>14</sup> and determining the validity and constitutionality of municipal residential rent controls.<sup>15</sup>

In criminal law, drawing extensively on his experience as a trial judge, he wrote prolifically on a wide variety of subjects, including: the judicial power of a magistrate to try a charged offense as a misdemeanor, free from any statutory requirement of the prosecutor's consent;<sup>16</sup> denial of the right to a speedy trial due to pre-arrest delay;<sup>17</sup> the discretion of the trial judge to exclude evidence of a prior felony conviction;<sup>18</sup> the application of the doctrine of collateral estoppel against the state to preclude the defendant's conviction of murder on a theory of vicarious liability for his confederate's conduct, where the latter had been acquitted of the murder charge;<sup>19</sup> and the rejection, in the absence of statutory authority, of a notice of alibi require-

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8. *Vesely v. Sager*, 5 Cal. 3d 153, 486 P.2d 151, 95 Cal. Rptr. 623 (1971).

9. *Ray v. Alad Corp.*, 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 574 (1977).

10. *Goodman v. Kennedy*, 18 Cal. 3d 335, 556 P.2d 737, 134 Cal. Rptr. 375 (1976).

11. *Martinez v. Socoma Companies, Inc.*, 11 Cal. 3d 394, 521 P.2d 841, 113 Cal. Rptr. 585 (1974).

12. *Estate of Beach*, 15 Cal. 3d 623, 542 P.2d 994, 125 Cal. Rptr. 570 (1975).

13. *Legislature v. Reinecke*, 10 Cal. 3d 396, 516 P.2d 6, 110 Cal. Rptr. 718 (1973); *see also* *Legislature v. Reinecke*, 6 Cal. 3d 595, 492 P.2d 385, 99 Cal. Rptr. 481 (1972).

14. *City of Los Angeles v. City of San Fernando*, 14 Cal. 3d 199, 537 P.2d 1250, 123 Cal. Rptr. 1 (1975).

15. *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 550 P.2d 1001, 130 Cal. Rptr. 465 (1976).

16. *Esteybar v. Municipal Court*, 5 Cal. 3d 119, 485 P.2d 1140, 95 Cal. Rptr. 524 (1971).

17. *Jones v. Superior Court*, 3 Cal. 3d 734, 478 P.2d 10, 91 Cal. Rptr. 578 (1970).

18. *People v. Beagle*, 6 Cal. 3d 441, 492 P.2d 1, 99 Cal. Rptr. 313 (1972).

19. *People v. Taylor*, 12 Cal. 3d 686, 527 P.2d 622, 117 Cal. Rptr. 70 (1974).

ment.<sup>20</sup> Apart from the above, in a distinguished line of cases beginning with *In re Minnis*<sup>21</sup> and culminating in *Gee v. Brown*,<sup>22</sup> he applied principles of due process to uphold the rights of probationers, prisoners, and parolees. Finally, in landmark opinions, he held that capital punishment constituted cruel and unusual punishment in contravention of former article I, section 6, of the California Constitution,<sup>23</sup> and that in certain instances a statutory maximum penalty of life imprisonment may be constitutionally impermissible as applied in that the term is so disproportionate to the offense as to constitute cruel and unusual punishment within the meaning of article I, section 17, of the California Constitution.<sup>24</sup> The closing language of the first of these two landmark opinions, *People v. Anderson*,<sup>25</sup> is a hallmark of his courage and compassion. "We have concluded that capital punishment is impermissibly cruel. It degrades and dehumanizes all who participate in its processes. It is unnecessary to any legitimate goal of the state and is incompatible with the dignity of man and the judicial process."<sup>26</sup> One is reminded of Professor Jaffe's assessment: "The great judge was great because when the occasion cried out for new law he dared to make it."<sup>27</sup>

Pervading and vitalizing his functions as Chief Justice and as Chairman of the Judicial Council and closely interwoven with his role as the author of many opinions was a high quality of leadership. At once intelligent and courageous, his leadership was uniquely effective because of the warmth and humor of the man himself in his dealings with his colleagues and with those outside the judiciary. At the weekly conferences on petitions for hearings and other pending matters, he always came fully prepared; despite the massive volume of petitions and other multifold duties limiting his time, he had personally read and digested all material, invariably working full Saturdays and Sundays to do so. In the ensuing discussion, he brought to bear on crucial points his experience as a trial judge and as a presiding judge of the largest trial court in the country, frequently exposing the utter impracticality of points urged by the parties or set forth in the research memoranda of the court. A hearing having been granted, he carefully assigned the cases for the preparation of calendar memoranda and of opinions in light of the justices' workload, not favoring himself but in fact assuming a greater burden of work than the circumstances called for.

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20. *Reynolds v. Superior Court*, 12 Cal. 3d 834, 528 P.2d 45, 117 Cal. Rptr. 437 (1974).

21. 7 Cal. 3d 639, 498 P.2d 997, 102 Cal. Rptr. 749 (1972).

22. 14 Cal. 3d 571, 536 P.2d 1017, 122 Cal. Rptr. 231 (1975).

23. *People v. Anderson*, 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972).

24. *In re Rodriguez*, 14 Cal. 3d 639, 537 P.2d 384, 122 Cal. Rptr. 552 (1975).

25. 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972).

26. *Id.* at 656, 493 P.2d at 899, 100 Cal. Rptr. at 171.

27. JAFFE, *supra* note 4, at 1.

On the bench he presided with dignity and firmness, but withal, a sympathetic concern for counsel before him. A stickler for argument within the allotted time, regardless of the number of questions from the bench, he never failed to recognize when fairness compelled a relaxation of the rule. In separate but related cases, counsel heard a strong admonition from the Chief that the court's time was not to be taken up with repetitive argument by different counsel on an identical issue and that counsel would be well-advised to adjourn to the lobby and agree upon a division of the field of controversy. Yet, during argument itself, the Chief Justice was attentive and relaxed, making copious notes, suddenly whipping out a coruscating comment from the bench—often an allusion to literature or music—sometimes as probing as a spotlight to illumine the point, occasionally in a puckish manner to prod the advocate, frequently in the form of a favorite query indicative of his philosophy—"But counsel, would you really want to live in that kind of society?"

At the meetings of the Judicial Council he won wide respect for his mastery of the agenda. Deeply involved in the committee work and thoroughly conversant with the welter of proposals under consideration, he provided the expert advice and personal guidance indispensable to the discharge of the council's constitutional duty.

The outstanding record of achievement made by Chief Justice Wright is in keeping with the finest tradition of our high courts. Endowed with superb qualities of mind and heart, he dedicated himself to the responsibilities of his office, marshalling, even at personal risk, all of his energies toward the carrying on and preservation of the tradition of the court as an institution and as the palladium of the judiciary's independence. Extraordinarily gifted, he concealed a keen and agile mind under an unassuming and lighthearted demeanor. Essentially a civilized man with deep interests in literature, music, and art, he abhorred the flamboyant, the pretentious, and the tasteless. With a high sense of duty and complete integrity, he had the hard-working judge's disdain for those who would avoid the arduous task. To his colleagues on the court, he was a person of understanding, good humor, refreshing candor, and warm solicitude; always a believer in judicial collegiality, nevertheless, when the responsibility was his alone, he responded with courage as the leader of the court. Along with his beautiful and gracious wife, Margo, he was always the cultured man in all phases of his personal and public life. He was indeed a judge's judge.

In his essay on Holmes, Justice Cardozo begins with a quotation from Euripides: "How can I praise thee and not overpraise, and yet not mar the

grace by stint thereof?"<sup>28</sup> We face the same dilemma. We feel that our esteem and affection for Chief Justice Wright remain ill-expressed. We sense that our praise of him remains inadequate.

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28. Cardozo, *Mr. Justice Holmes*, 44 HARV. L. REV. 682, 682 (1931).

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